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Treasurer: Frederick Wolf, DBA, Legacy Site Services for Arkema

March 05, 2011

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Kristine Koch
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Re: Response to EPA February 25, 2011 Letter (Lower Willamette River, Portland Harbor Superfund Site, USEPA Docket No: CERCLA-10-2001-0240)

Dear Chip and Kristine:

The Lower Willamette Group (LWG) is in receipt of your letter dated February 25, 2011, in which the Environmental Protection Agency (EPA) provides its response to the LWG's proposed project schedule, as presented in our letter to EPA on February 2, 2011. The LWG has determined that it will be able to meet most of the deadlines set forth in your letter. We remain concerned, however, about the deadlines for submission of the revised Remedial Investigation (RI) and draft Feasibility Study (FS). We therefore respectfully request a two-week extension of the March 11 deadline for invoking dispute resolution so we can attempt to reach agreement with you on those deadlines.

Areas of Agreement

First, the LWG agrees to provide the tables and calculations for the combined adult and child scenarios, evaluation of polybrominated biphenyl ethers (PBDEs), and breast milk scenarios by March 17, 2011. As you know, these are new risk scenarios directed by EPA just this past December, and the LWG consultant was still negotiating the specifics of these scenarios with the EPA risk assessment team in late January 2011. Therefore, these tables will need to be submitted in draft form and may be subject to further review and correction by the LWG in the revised Baseline Human Health Risk Assessment (BHRRA).

Second, the LWG will submit the revised BHHRA on May 2, 2011 and the revised BERA on July 5, 2011.¹ With respect to the Baseline Ecological Risk Assessment (BERA), to the extent the clarifications set forth in the enclosure to your February 25 letter provide revised direction, we agree to implement that direction.

Third, we will submit the alternatives screening analysis requested by April 12, 2011.² Consistent with the request, in this analysis the LWG will determine site-wide general response actions, conduct a site-wide technology screen, and evaluate and screen each general response action and technology for each of the AOPCs. EPA is not requiring the LWG to provide the results of the AOPC to SMA conversion at this time, but the LWG agrees to provide EPA with three examples of how AOPCs convert to SMAs by August 4, 2011.

Fourth, LWG will provide a check-in on key FS elements, including Remedial Action Levels, by June 22, 2011.

Finally, the LWG agrees to include in the draft Feasibility Study analysis all areas above acceptable risk levels as determined by methods consistent with the harbor-wide process, including areas currently undergoing early actions. Information on the technologies and alternatives being considered in those early actions, as available on a timing that fits into the FS development schedule and as applicable, will be incorporated into the draft FS analysis. It is our understanding, however, that the currently locked-down FS database will not be updated with new specific data from these early actions, because this would have a severe impact on the FS schedule. The FS will include information regarding sustainable and green cleanup technologies consistent with EPA guidance.

Areas Needing Further Discussion

The LWG understands EPA's desire to receive the revised RI and draft FS as quickly as possible. The LWG also wants to complete this work as quickly as it possibly can. That said, we believe these documents must be very well done, and we think the deadlines for the revised RI and the draft FS established by your February 25 letter will be extremely difficult, if not impossible, for the LWG to meet with high quality deliverables. The reasons we believe these deadlines are impracticable are discussed at length in our January 12 and February 2 letters, and we will not repeat them here. For these reasons, we respectfully request a two week extension to the March 11, 2011 deadline for invoking dispute resolution on EPA's directed deadlines for these two deliverables to attempt to reach agreement with EPA on dates for submission of the documents.

¹ We understand that EPA is requiring that we submit redlined versions of these documents in electronic format only, and that the drafts submitted on these deadlines need not meet EPA's criteria for final submission of documents, including hard copies and electronic copies meeting EPA accessibility requirements.

² The LWG disagrees that the alternatives screening check-in meeting scheduled for December 14, 2010 was a deliverable under §XIX.5 of the Administrative Settlement Agreement and Order on Consent and would dispute and contest any stipulated penalties related to the rescheduling of this meeting. We believe, however, that we need not debate the issue now, because we intend to provide the requested materials by April 12, 2011.

EPA's February 25 letter states EPA's view that conditional approval of the RI and risk assessments before submission of the draft FS is not necessary. The LWG believes it would be most valuable to have EPA's approval of the revised BHHRA, BERA and RI prior to submittal of the draft FS. According to EPA guidance, this would be following the "recommended RI/FS process." Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies, EPA/540/G-91/010a Directive NO. 9835.1, 7/1/91, see Figure 1.5d. However, the LWG recognizes that everyone will be working on a greatly compressed schedule to achieve these project deadlines. Because EPA will have the revised risk assessments by mid-summer, and because EPA's review of these revised documents will be based on EPA's prior comments, the LWG is hopeful it will now be possible for EPA to complete its review of the RI and risk assessments so as to provide substantial review and conditional approvals prior to submittal of the draft FS. If the LWG and EPA can reach agreement on a date for submittal of the draft FS, however, the LWG will not delay the submission if EPA is unable to provide those approvals prior to that date. EPA's position that the draft FS should be submitted based on a date certain (rather than following condition approval of the RI and risk assessments) means that to the extent EPA has additional new or significant comments on the RI and/or risk assessments, the LWG will not have time make corresponding revisions to the draft FS. Likewise, the LWG would not be able to incorporate significant revisions to the risk assessments or the RI until after it submits the draft FS to EPA.

With respect to the interim deliverables described above, the LWG February 2 letter and Gantt schedule for the draft FS represented the minimum amount of time we believe is required to produce a comprehensive, high quality FS that is responsive to EPA guidance and specific EPA requests. The schedule did not anticipate production of additional interim deliverables related to SMA development and RALs and receipt of comments from EPA on those deliverables. We believe we can provide these additional interim deliverables, but we do not think that we will be able to incorporate revisions to the draft FS based upon EPA comments on the interim deliverables by the LWG's proposed December 15 draft FS submittal date.

The LWG requests a meeting with EPA as soon as possible to attempt to reach agreement on submission dates for the revised Remedial Investigation and the draft Feasibility Study. If EPA is unwilling to grant the extension we request, the LWG respectfully disputes EPA's establishment of an August 1 or September 28, 2011 deadline for submission of the revised Remedial Investigation and a November 15, 2011 deadline for submission of the draft Feasibility Study. For the reasons more fully described in our letters of January 12 and February 2, 2011, and as demonstrated by the detailed schedule provided to EPA on February 25, 2011, the LWG is unable to meet the requirements for those documents set out in EPA's September 27, 2010, December 8, 2010, December 21, 2010 and February 25, 2011 letters by the deadlines established in EPA's February 25, 2011 letter.

Chip Humphrey
Kristine Koch
March 9, 2011
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Sincerely,

Bob Wyatt

cc: Confederated Tribes and Bands of the Yakama Nation
 Confederated Tribes of the Grand Ronde Community of Oregon
 Confederated Tribes of Siletz Indians of Oregon
 Confederated Tribes of the Umatilla Indian Reservation
 Confederated Tribes of the Warm Springs Reservation of Oregon
 Nez Perce Tribe
 Oregon Department of Fish & Wildlife
 United States Fish & Wildlife
 Oregon Department of Environmental Quality
 LWG Legal
 LWG Repository